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September 9, 2020

VIA ECF

Honorable Freda L. Wolfson, Chief Judge
United States District Court- District of NJ
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street, Court Room 5E
Trenton, NJ 08608

Re: *In re: Johnson & Johnson Talcum Powder Products Marketing, Sales Practices and Products Liability Litigation - MDL 2738*

Dear Chief Judge Wolfson:

We write on behalf of defendants Johnson & Johnson and Johnson & Johnson Consumer Inc. ("Defendants") in response to plaintiffs' letter of September 8, 2020, apparently attempting to pre-empt the filing of motions to dismiss discovery pool cases. Usually opposition papers are filed after a motion is filed, not before. But the facts are these:

The Court's orders clearly required the 1,000 (now down to 974) plaintiffs in the discovery pool to do these basic things by September 2, 2020:

- (1) produce a fully complete and verified Plaintiff Profile Form ("PPF");
- (2) produce executed medical record retrieval authorizations; and
- (3) promptly order **and produce** core records.

See June 4, 2020 Order [Doc. No. 13525].

Honorable Freda L. Wolfson,
Chief Judge

-2-

September 9, 2020

During the months after this Order was entered, Defendants sent several notes to Ms. O'Dell and Ms. Parfitt pointing out the low rate of PPF submissions, and urging against a mass dump of submissions on September 1. Defendants even offered not to serve deficiency notices “for a lack of medical records before August 31 as a way of encouraging plaintiffs to get their fact sheets on file now as long as the fact sheet is complete and verified, the authorizations are attached, the medical records in hand are produced and the rest will be uploaded upon receipt.” See Exhibit A, email correspondence dated August 10, 2020.

In response, Ms. Parfitt requested that Defendants not serve deficiency notices before September 3. The defendants complied with this request. (Ms. Parfitt’s response was notably silent as to plaintiffs’ current assertion that medical records only need to be ordered, not produced, by September 2.) *Id.* Nevertheless, as the defense feared, on eve of the deadline, September 1 and 2, 337 PPFs—more than one-third of the pool—were submitted.

Forty plaintiffs (4% of the pool) filed nothing at all. Learning of this, Ms. Parfitt asked that defendants not file motions until after the Labor Day weekend. Again, we agreed. There is nothing left about which to “meet and confer” and, in light of the ample opportunity to submit PPFs and supporting documents, Defendants plan to file motions to dismiss cases in which plaintiffs, even now, have filed nothing.

Separately, defendants are carefully evaluating the responses (if any) to the 398 notices of deficiency that were sent to approximately 50 firms whose plaintiffs who failed to supply medical records and/or who had major gaps in their PPF responses. We are hearing a variety of excuses from plaintiff lawyers – for example – medical records not ordered until just before the September 2 deadline; all the medical records have been destroyed; the plaintiff died recently – in January 2018; the plaintiff is missing in action; lack of knowledge that the case was selected for the discovery pool; objection because there was no personal service of the case management orders. There has been no response at all to 250 of the notices. One firm, with 81 cases on the deficiency list, sent one joint response for all the cases, which was a flat objection.

Honorable Freda L. Wolfson,
Chief Judge

-3-

September 9, 2020

We submit that the time to oppose our motions for failure to comply with the Court's orders is after we file them, which we will in the coming days. Thank you for your consideration of these matters.

Respectfully submitted,

/s/ Susan M. Sharko

Susan M. Sharko

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*Attorneys for Defendants Johnson &
Johnson and Johnson & Johnson
Consumer Inc.*

cc: All Counsel of Record (via ECF)

EXHIBIT A

Brennan, Jessica L.

From: Michelle Parfitt <MParfitt@ashcraftlaw.com>
Sent: Tuesday, August 11, 2020 12:18 PM
To: Sharko, Susan M <susan.sharko@faegredrinker.com>
Cc: Leigh O'Dell <Leigh.ODell@BeasleyAllen.com>
Subject: Re: Talc - fact sheet concerns

This Message originated outside your organization.

Susan , What would help is that there will be no deficiency notices served by JJ before 9/3. If agreeable we will get this information out to counsel which should move this along. Let us know. Thanks again. Michelle

Michelle A. Parfitt
Senior Partner

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On Aug 10, 2020, at 5:56 PM, Sharko, Susan M <susan.sharko@faegredrinker.com> wrote:

As discussed, we are very concerned about the small number of fact sheets that have been provided to date. In order to expedite things and keep to the agreed upon schedule, if it will expedite things, we won't serve deficiency notes for a lack of medical records before August 31 as a way of encouraging plaintiffs to get their fact sheets on file now as long as the fact sheet is complete and verified, the authorizations are attached, the medical records in hand are produced and the rest will be uploaded upon receipt. Please let me know if this will help expedite filings. Thanks. Susan

Susan M. Sharko

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